

Statement of
Brian P. Lamb
Chairman and Chief Executive Officer
of
The C-SPAN Networks
before the
Senate Committee on Commerce, Science, and Transportation
July 8, 1998

Mr. Chairman, and members of the Committee:

I am here to deliver a simple and, I hope, clear message to this Committee and to the Congress: if 'must carry' status is granted to digital broadcast signals, the C-SPAN Networks, and most important, the American people who watch the Senate and the House on television, will be harmed.

And, that harm can be avoided simply by letting the free market work in the digital era to determine which programmers deserve a channel on a cable system.

Since 1993 our public service efforts have been, and continue to be, a victim of the must carry rule. They will be victimized once again unless the Congress and the Federal Communications Commission take a deep breath and think through the consequences of applying the old rules to the new digital world.

That is why I am especially grateful that you have asked us to testify now, at this relatively early stage in the process. When the current version of the must carry rule was gaining a legislative foothold, we waited too long to tell our story. By 1991, when I told the House telecommunications subcommittee that the must carry rule would result in millions of Americans losing the ability to watch their own government in action, it

was already too late to make a difference. The must carry die had already been cast. Perhaps it will be different this time as your Committee takes an early look at the many issues raised by the move toward digital television.

Unlike in 1991, however, as we sit here in 1998 the C-SPAN Networks bear the scars of the must carry rule. We have, if you will, "been there, and done that." As a direct result of the many provisions of the 1992 Cable Act, C-SPAN and C-SPAN 2 were either dropped entirely or cut back to part time carriage in nearly 10 million households as scarce channel space was taken up by government-imposed preferences for broadcasters and other programmers. Of those nearly 10 million households that lost some or all of the C-SPAN Networks, nearly 5 million suffered that loss as a direct result of the must carry rule and retransmission consent.

For 5 years we expended a lot of energy and a good portion of our non-profit resources to combat the effects of the 1992 Act. Thanks to that hard work and the cable industry's broad commitment to our public service efforts, we were able to restore carriage in many communities. Yet, at the same time we gained subscribers as the industry grew. We added cable system affiliates, and we attracted a wider audience; but there are still over 1 million households across the country with less access to our networks as a result of just the must carry rule than we had before the 1992 Act.

Six weeks ago I told C-SPAN's must carry story in a letter to the members of this committee, to the House communications committee and to the Congressional leadership. A week later I received a letter from the National Association of Broadcasters that said, in effect, our numbers just don't add up, we really don't have that much to complain about, and, by the way, we ought to be more careful about what we tell Congress. In my view, the NAB and others have missed the point completely.

Let me respond, first, by submitting for the record a list of communities where the harmful effect of the must carry rule and retransmission consent on the availability of C-

SPAN or C-SPAN 2 is still being felt today. And, so that the record is complete I also submit my letter of May 22, 1998 to you as well as the NAB response.

Let me respond further by saying that this is not a numbers game. The lawyers and the lobbyists can try to minimize the damage to our public service efforts by citing overall carriage growth, and so forth. But in doing so they miss the fundamental point: there are thousands of real people who watch, vote, write, think and care about their country who continue to have less television access to their government today than before the 1992 Act, no matter how many more subscribers we may have gained since.

My concern is for them and the incalculable number of Americans whom we were denied the chance of ever reaching due to the 1992 Act, and more particularly, due to the must carry rule and retransmission consent.

That concern is deepened by the certainty that we will lose millions more households that now receive our programming, and that we will be prevented from reaching additional households as the cable and broadcast industries enter the digital age -- that is, *if* digital must carry becomes law.

A final response is really in anticipation of those who would have you believe that our complaint is not with a digital must carry rule, but that it is with the cable industry. To them I make these few observations. The cable industry created our networks, even though they were not urged or ordered by the government to do so. Cable operators pay license fees to support our public affairs programs and educational projects because the C-SPAN Networks are good for their customers and good for their country. And they do it on a non-profit basis, without making money for themselves or anybody else. They are providing precisely the kind of programs the government has been nearly begging licensed broadcasters to provide, and the cable operators do it without the governmental sword of a statutory "public service

obligation".

Yet, they have been confronted with legislation that has made it very difficult for them to provide us with maximum distribution. Our complaint is that we are at the tail end of a domino effect created by the law. Cable systems are forced to dedicate one channel after another to satisfy national government mandates, even after fulfilling local obligations. By the time a cable operator satisfies the requirements of must carry (including carriage of all-day home shopping stations), retransmission consent, leased access and PEG programming, for example, there are that many fewer channels for C-SPAN, C-SPAN 2 or any other programmer, regardless of the public service benefit to the audience, or even commercial benefit to the cable operator. On top of that, the rate regulation provisions of the 1992 Act put the C-SPAN Networks at a decided disadvantage against the many other cable programmers that actually make money for the cable systems that carry them.

Must carry and retransmission consent are closely linked in this set of dominos. They are impossible to separate, particularly when the last domino falls and a cable operator is forced to make a programming decision. In any single case where carriage of C-SPAN or C-SPAN 2 is dropped or cut back, several "plausible" explanations unrelated to must carry or retransmission consent may be offered by outsiders -- and such explanations have been offered, usually to muddy the debate in which we are now engaged. The plain fact is that when the must carry/retransmission consent domino became law, C-SPAN 2's steady growth came to a standstill overnight, and lost any chance of catching up to C-SPAN's much wider distribution.

Clearly, history teaches us that we have good reason to be concerned if must carry status is granted to the digital signals local broadcasters will soon be transmitting. But this time around the harm to the C-SPAN Networks and other programmers is certain to be much greater than that we have experienced so far. Not only will it cut off

millions of more Americans from direct access to the Senate and House debates and our event coverage, it will continue the erosion of our First Amendment rights that began with the 1992 Cable Act. A digital must carry rule will solidify our position among a whole class of programmers who must stand second in line to every holder of a broadcast license in every community in the country.

Despite our vigorous First Amendment challenge to the analog-era must carry rule, a closely divided Supreme Court supported it. The digital era will bring an entirely different set of facts, with a vastly different and greater effect on the satellite delivered programmers if the old must carry rule is simply tacked onto the new regime. If it is, the C-SPAN Networks will be first in line to once again challenge the infringement of our free speech right.

Fortunately, there is still time for everyone involved in the move toward digital television to avoid that particular battle. As you will no doubt hear from other witnesses there is a lot about this technology that is simply unknown, even to the so-called experts. For that reason alone, Congress and the FCC should slow down the fast track we are all on. For our part, the C-SPAN Networks prefer to trust the free market to solve most of the emerging digital television problems, just as the cable industry did when it created us. The government would do well by taking the same approach.